



Montana Senate Agriculture Committee

March 17, 2009

Statement of Opposition to House Bill HB 445

Chairman Steinbeisser and members of the Senate Agriculture Committee, BIO would like to submit our statement, on behalf of our member companies, in opposition to HB 445. BIO opposes the proposal relating to sampling and liability exemptions as this bill would serve to complicate grower contracts for seed, could hinder the adoption of biotechnology in Montana, will confuse all buyers and sellers of any patented seed biotech or not.

BIO is a national trade organization, based in Washington, D.C., representing more than 1,200 biotechnology companies, academic institutions, state biotechnology centers, and related organizations across the United States and 31 other nations. BIO members are involved in the research and development of healthcare, agricultural, industrial and environmental biotechnology products. BIO represents virtually all of the biotech seed manufacturers in North America.

BIO would like to offer to the Committee the following points to consider as you analyze the real impact that HB 445 could have on agriculture in Montana.

- First, farmers around the world continue to enthusiastically embrace genetically engineered (GE) crops according to a latest acreage report for 2008 released in mid February 2009.

After a dozen years of commercialization, the global adoption of biotech crops continues to rise with new countries realizing the benefits, according to a report released in mid February by the International Service for the Acquisition of Agri-biotech Applications (ISAAA). In 2008, biotech crop area **grew 9.4 percent or by 26.43 million acres to reach 309 million acres worldwide – the majority in the United States. Over the past dozen years globally, biotech crops have topped over 1 Billion acres collectively.**

A record 13.3 million farmers in 25 countries are using agricultural

biotechnology. Ninety percent (12.3 million) of these are resource-poor farmers in 15 developing countries. (Attached to this statement of opposition to HB445, you will find a two-page informational document with details on the latest global acreage report.)

- While the global and Montana acreage of biotech crops continue to increase there also is data that shows commercial organic acreage to have grown. The data does not show that the increase in biotech crops has had a negative impact on organic – rather the opposite may be true. Our industry embraces the concept of coexistence where various ag production practices can be employed in parallel to each other without one harming the other. The past dozen years of experience have taught us this even if we don't want to look at the data.
- To bring a biotech seed to the market, from the research scientist's wild dreams through the stringent regulatory process, to the actual sales can take upwards of 10 years and will cost in the hundreds of millions of dollars to the technology provider. The provider only has a limited number of years to recoup the development costs and to make a profit. Federal and international patent law ensures this ability and also protects their intellectual property – the seed. A buyer of biotechnology enhanced seed cannot save seed from one season to the next and agrees to this in writing when purchasing the product. If he wants to be able to save seed there are many varieties of seed for any crop that a grower can purchase other than biotech seeds. If he chooses to buy the biotech seed, and derive the higher value from the resulting crop, the producer agrees to using it for that specific year. A miniscule number of growers may try to illegally use seed that they have not paid for, and for those instances Federal law is very clearly against that possibility.

HB 445 if enacted could serve to confuse growers over what they can and cannot do when making a decision to purchase biotech seed. It certainly could encourage the small number of growers who would want to re-use patented seed to do so without paying for that ability.

- BIO is not aware that there has been any general problem in Montana of seed technology providers suing farmers. If there is not a problem in this state or elsewhere – we again cite the ISAAA record yields data for last year – why adopt a policy that could be confusing at best and at worst benefit bad actors thereby harming those who abide by the law?

- BIO strongly believes that this bill would improperly restrict federal patent and plant variety protection rights established by the U.S. Constitution and federal intellectual property law. As such, a court would likely find the bill to be preempted by federal law.
- The bill's attempt to limit venue to Montana state court might be unconstitutional. States cannot restrict the right of citizens from other states, or those seeking to enforce federal intellectual property rights, from bringing suit in federal court.
- Art. III, Sec. 2 of the U.S. Constitution grants jurisdiction to federal courts over disputes involving citizens of different states and of those involving rights established under federal law or the Constitution (such as intellectual property rights). It is well-established that state courts cannot deprive federal courts of this jurisdiction.
- Unless the parties to the dispute have agreed otherwise, federal law requires that patent and plant variety protection infringement cases be brought in the judicial district where the defendant resides or where the disputed activities occurred. 28 U.S. Code § 1391(b).

HB445 has no basis and likely would cause numerous problems for Montana agriculture if enacted. BIO urges the Montana Senate Agriculture Committee to OPPOSE HB 445. Thank you.

KEY FINDINGS OF THE 2009 ISAAA REPORT

- In 2008, global biotech acreage grew to 309 million acres (125 million hectares) versus 282 million acres (114.3 million hectares) in 2007.
 - This is a 26.43 million acre (10.7 million hectare) increase, an increase of 9.4 percent.
- In 2008, biotech crops were grown in 25 countries, up from 23 countries in 2007.
 - New countries growing biotech crops include the African nations of Egypt and Burkina Faso.
 - Africa is considered the “final frontier” for biotech crops as it has perhaps the greatest need and most to gain.
- More than 2 billion acres (800 million hectares) of biotech crops have been planted globally since 1996.
 - Accumulated acreage of biotech crops (for the period 1996 to 2008) exceeded 2 billion acres in 2008 for the first time.
 - It took 10 years to reach the first billion acres, but only three years to reach the second billion acres.
 - Of the 25 countries planting biotech crops, 15 are developing countries.
- In 2008, biotech crops were grown by 13.3 million farmers, up from 12 million in 2007.
 - 90 percent (12.3 million) are resource-poor farmers.
- By the end of the second decade of commercialization in 2015, ISAAA predicts that four billion accumulated acres will have been planted.
 - Further, ISAAA predicts 200 million hectares of biotech crops annually will be planted in a total of 40 countries.

Table 1. Global Area of Biotech Crops in 2008: by Country (Million Hectares)

Rank	Country	Area (million hectares)	Biotech Crops
1*	USA*	62.5	Soybean, maize, cotton, canola, squash, papaya, alfalfa, sugarbeet
2*	Argentina*	21.0	Soybean, maize, cotton
3*	Brazil*	15.8	Soybean, maize, cotton
4*	India*	7.6	Cotton
5*	Canada*	7.6	Canola, maize, soybean, sugarbeet
6*	China*	3.8	Cotton, tomato, poplar, petunia, papaya, sweet pepper
7*	Paraguay*	2.7	Soybean
8*	South Africa*	1.8	Maize, soybean, cotton
9*	Uruguay*	0.7	Soybean, maize
10*	Bolivia*	0.6	Soybean
11*	Philippines*	0.4	Maize
12*	Australia*	0.2	Cotton, canola, carnation
13*	Mexico*	0.1	Cotton, soybean
14*	Spain*	0.1	Maize
15	Chile	<0.1	Maize, soybean, canola
16	Colombia	<0.1	Cotton, carnation
17	Honduras	<0.1	Maize
18	Burkina Faso	<0.1	Cotton
19	Czech Republic	<0.1	Maize
20	Romania	<0.1	Maize
21	Portugal	<0.1	Maize
22	Germany	<0.1	Maize
23	Poland	<0.1	Maize
24	Slovakia	<0.1	Maize
25	Egypt	<0.1	Maize

* 14 biotech mega-countries growing 50,000 hectares, or more, of biotech crops

Source: Clive James, 2008.